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JAN 24 2006

IN THE UNITED STATES DISTRICT COURT  
CLERK U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
WEST. DIST. OF PENNSYLVANIA

RYAN KERWIN : CASE NO. 05-93 ERIE  
VS. :  
LT. WILLIAM MCCONNELL : MAGISTRATE JUDGE SUSAN BAXTER  
: DISTRICT JUDGE SEAN MC LAUGHLIN

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BRIEF IN SUPPORT OF MOTION TO COMPEL

Federal Rule of Civil Procedure 37 (a)(2)(b) states:

If a party, fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

Federal Rule of Civil Procedure 37 (a)(4)(a) states:

If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of

expenses unjust.

Because the defendant has failed to provide plaintiff with responses to his requests for production of documents and interrogatories within the requisite time period, because plaintiff has made a good faith effort to obtain these discovery responses without court action and because the defendant's refusal to provide this discovery had no substantial justification, an order compelling this discovery and an order granting plaintiff reasonable expenses for the cost and preparation of this motion are warranted.

1/22/06

Date

Ryan Kerwin

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DZ0246

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CERTIFICATE OF SERVICE

I hereby declare that I mailed a true and correct copy of the attached motion to compel, brief in support of the motion to compel, and certification of conference to the defendant's counsel at the following address:

Kemal Alexander Mericli  
Office of Attorney General  
564 Forbes Avenue  
Manor Complex  
Pittsburgh, PA. 15219

1/22/06

Date

Ryan Kerwin

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